

IRS News Release

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Treasury and IRS Give Taxpayers Greater Control over Information Held by Tax Preparers; Propose Marketing Restrictions on RALs

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WASHINGTON — The Treasury Department and the Internal Revenue Service today released final regulations and a related revenue procedure giving taxpayers greater protection and control over their tax return information held by tax return preparers. Treasury and the IRS also issued a separate request for public comment on a proposal to restrict the marketing of refund anticipation loans and similar products.

The final rules update disclosure and privacy laws related to preparers for the first time in more than 30 years and bring taxpayer consent requirements into the electronic age. Preparers will have until Jan. 1, 2009 to implement the new consent requirements, giving preparers a full year to make any necessary changes.

The final rules apply to Code section 7216 and a related provision of the Code, section 6713, which provide penalties against tax return preparers who make unauthorized use or disclosure of tax return information. Regulations published in 1974 provide certain exceptions to the penalties in cases of taxpayer consent. However, the 1974 regulations did not address issues raised by electronic preparation and filing of tax returns. Currently, 57 percent of all individual taxpayers file their tax returns electronically.

The final rules affirm a general rule in place for more than three decades that taxpayers, not the IRS, control their own tax return information held by preparers and, within appropriate limits and safeguards, taxpayers are able to direct preparers to disclose tax return information as taxpayers see fit. More than 60 percent of individual taxpayers use a preparer.

Federal law already strictly prohibits the IRS from making disclosures of taxpayer return information within its control to third parties except with taxpayer consent or in circumstances set by Congress. The final rules have no effect on the strict protection of return information in the IRS's hands and apply only to tax return information held by income tax return preparers.

Among the new rules:

- Generally, preparers must obtain taxpayer consent, either by paper or electronically depending on how the return is being filed, before tax return

information can be disclosed to any third party or used for any purpose other than filing the return.

- If the taxpayer consents to the disclosure and use of his information, the consent must identify the intended purpose of the disclosure, identify the recipients and describe the particular authorized disclosure or use of the information.
- Mandatory language informs individual taxpayers that they are not required to sign the consent; that if they sign the consent, federal law may not protect their information from further disclosure; and that if they sign the consent, they can set a time period for the duration of that consent. If taxpayers fail to set a time period, the consent is valid for a maximum of one year.
- To prevent consent requests from individual taxpayers from being buried in fine print, the rules require the paper consent documents to be in 12-point type on 8 1/2 by 11 inch paper and require electronic consent requests to be in the same type as the Web site's standard text, all to prevent consent requests from being too difficult to read for individual taxpayers.
- If a taxpayer declines to provide consent for an unrelated tax preparation disclosure or use request, the preparer cannot make a similar consent request. The intent is to protect taxpayers from being pressured with repeated consent requests regarding the same issue.
- Mandatory consent from taxpayers also is required if the tax information is going to be disclosed to a tax preparer located outside the United States. This provision is intended to ensure taxpayers are informed if their tax information is being sent off-shore for return preparation. The individual taxpayer's Social Security Number also must be redacted.

Proposed regulations under section 7216 were the subject of many public comments during the comment period in late 2005 and early 2006. The final regulations summarize many of the comments and explain how these comments were addressed.

One issue that was raised during the comment period was the use by tax return preparers of tax return information to market Refund Anticipation Loans (RALs) to taxpayers. The issue of marketing RALs and similar products, such as Refund Anticipation Checks and Audit Insurance, was not specifically addressed in the proposed regulations.

The Treasury Department and the IRS are concerned that RALs and similar products may provide preparers with a financial incentive to take improper tax return positions in order to inflate refund claims inappropriately. In order to give the public an opportunity to comment on this issue, the Treasury Department and the IRS are issuing an Advance Notice of Proposed Rulemaking (ANPRM) that announces they are considering a proposal that tax return preparers be prohibited from disclosing or using taxpayer return information for the purpose of selling products such as RALs and similar products.

The ANPRM has a 90-day written comment period after the publication in the Federal Register. Thereafter, the Treasury Department and the IRS will consider what steps, if any, to take with respect to RALs and similar products.